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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,621

03/10/2004

Edward I. Wulfman

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EXAMINER

BERDICHEVSKY, AARTI

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

11/13/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,621	<b>Applicant(s)</b> WULFMAN ET AL.	
	<b>Examiner</b> Aarti Bhatia Berdichevsky	<b>Art Unit</b> 3763	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 June 2009 and 16 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-7,9,10,16-19,24,27-29,32,56 and 58-65 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,56 and 61-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,9,10,16-19,24,27-29,32,58-60,64 and 65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This is the fourth Office Action based on the 10/798,621 application filed on 3/10/2004. Claims 2-7, 9-10, 16-19, 24, 27-29, 32, 56, and 58-65, as amended on 6/17/2009, are currently pending and have been considered below.

### ***Formal Observations***

1. The Examiner notes that the response dated 6/17/2009 contains the incorrect application number in the heading of both the remarks and the amended claims. The number should read 10/798,621 instead of 10/798,618, which is a related co-pending application.
2. Claim 6, although currently withdrawn by the restriction requirement, has the incorrect claim identifier. Claim 6 should be marked "currently amended" instead of "previously presented", as the final line of the claim appears to contain an amendment.
3. In the response dated 9/16/2009, it appears that claim 3 depending on claim 18, was omitted from the response. The Examiner believes this to be an unintentional omission, and is including claim 3 in the present office action.

### ***Election/Restrictions***

4. Claims 6, 7, 56, 61-63 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/16/2009.

***Drawings***

5. The drawings are objected to under 37 CFR 1.83(a) because they fail to show “slideable operating head activation control 280” as described in the specification. It is unclear to the Examiner if 280 is equivalent to “slideable drive motor actuator 220”.

6. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,398,755 to Belef et al.

Belef teaches an interventional catheter assembly (4) comprising: an operating head (32) coupled to a drive shaft and a drive assembly (figure 4) for rotation and a catheter system forming a sealed lumen (50) mounted for axial translation at a proximal end with a control pod (22) and communicating at a distal end with the operating head (32); and a control pod housing (28) operational components for selectably rotating the operating head, wherein the control pod houses a drive motor (90) operably coupled to the drive shaft and the drive motor is coupled to an actuator (26) slidably (via 48) mounted on the catheter system distally (48 is distal to 22) to the control pod and in operable communication with the drive system, and wherein the actuator is connected to a switch (40) that activates the drive system.

Belef discloses the claimed invention except for teaching that the slidable actuator is completely distal to the control pod and that the switch is incorporated into the actuator. The function of the slidable actuator of Belef is for the same general purpose as the present invention. One having ordinary skill in the art would have been able to modify the actuator of Belef to be detached from the control pod and to include the activation switch on the actuator at the time the invention was made with predictable results.

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9. Claims 2, 3, 4, 5, 9, 10, 16, 17, 19, 24, 27, 28, 29, 32, 58-60 and 64-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,398,755 to Belef et al. in view of U.S. Patent No. 5,921,956 to Grinberg et al., US 2002/0007190 to Wulfman et al., U.S. Patent No. 6,565,588 to Clement et al., U.S. Patent No. 5,584,843 to Wulfman et al, and U.S. Patent No. 5,540,681 to Strul et al as set forth in previous office actions.

### ***Response to Arguments***

10. Applicant's arguments filed 6/17/2009 have been fully considered but they are not persuasive.

11. With respect to claim 18, the Applicant argues that rearranging the position of the actuator must be done where a person having ordinary skill in the art could predict the result. The examiner believes one of ordinary skill would be able to predict the result of making the slideable actuator completely distal of the control pod. It would have been obvious that by detaching the slideable actuator and the control pod, a greater level of translational movement would be achieved. The Examiner notes, that the level of translational movement is not limited by claim 18. Further, the Applicant argues that the positioning of the actuator allows the operator to activate the drive system and aspiration system at the same time, however this argument is moot, as this is not a limitation claimed in claim 18.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aarti Bhatia Berdichevsky whose telephone number is 571-270-5033. The examiner can normally be reached M-Th 8 AM to 6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aarti Bhatia Berdichevsky/  
Examiner, Art Unit 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763